

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0779**

**Income Tax**

**Fiscal Years ending December 23, 1992, January 31, 1993, January 31, 1994,  
January 31, 1995, January 31, 1996, and January 31, 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on an income tax assessment resulting from a Department audit conducted for the fiscal years December 23, 1992, January 31, 1993, January 31, 1994, January 31, 1995, January 31, 1996, and January 31, 1997.

The taxpayer is a manufacturer of wheels for the automotive industry (cars and light trucks). Wheels are shipped to customer assembly plants in several states and foreign countries.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer is protesting the negligence penalty based on the premise the taxpayer has conducted tax duties in a good faith manner, and, the penalty should be waived as this audit is a first-time audit. The taxpayer also argues the controlling Code statute, IC 6-8.1-10-2.1(d) states negligence penalty is to be only assessed when the taxpayer has conducted tax duties with willful negligence.

The error discovered in the audit is the result of the taxpayer relying on an unrelated third party (the former parent corporation) to prepare tax returns. The taxpayer relied on the incorrect tax returns to the taxpayer's detriment.

The Department agrees the taxpayer has acted in a good faith manner without willful negligence. However, the Department points out IC 6-8.1-10-2.1(d) also states the taxpayer must act with reasonable care as described by 45 IAC 15-11-2(b).

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was careless in relying on an unrelated third party. As such, the Department finds the taxpayer was negligent and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

### **FINDING**

The taxpayer's penalty protest is denied.